IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
FIRST APPEAL NO.704 OF 1991

The State of Maharashtra,)
(at the instance of the Special)
Land Acquisition Officer,)
Metro Centre No.IV, Panvel,)
Taluka : Panvel, District-Raigad.).. Appellant.

Vs.

Shri Vinayak Ragho Chaudhari,)
Age Adult, Residing at Ranjanpada,)
Taluka : Panvel, District - Raigad.).. Respondent
(Org.Claimant)

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Shri K.K.Tated, AGP for the Appellant.

Shri S.M.Gorwadkar for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29TH SEPTEMBER, 2005.

ORAL JUDGMENT: (Per Shri V.M.Kanade, J)

1. The appellant/State of Maharashtra challenges the judgment and award passed by the Civil Judge, Senior Division, Raigad, Alibag, in LAR No.37 of 1989. After the appeal was admitted, cross objections bearing Stamp No.32572 of 1991 have been filed by the respondent-claimant.

2. Brief facts relevant for the purpose of deciding the present first appeal and the cross objections are as under:-

3. The SLAO acquired the area of land of the respondent/claimant admeasuring 34900 sq. meters. Initially, notification under Section 4 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", was issued on 3rd February, 1970. Thereafter, notification under Sections 6 and 9 of the said Act was issued. The claimant gave reply to the notice under Section 9 and claimed compensation to the tune of Rs.50,000/- per acre and also claimed compensation of Rs.10,000/- towards the value of trees as Rs.20,000/- towards the value of well which was constituted on the very land which was acquired. The SLAO passed the award on 25th August, 1986 and awarded compensation which was paid to the claimant of Rs.1,19,753.95 ps. The possession of the land was taken on 1st September, 1986. The application for reference was filed by the claimant against the said compensation awarded by the SLAO. In the Reference, the Civil Judge, Senior Division, enhanced the compensation and awarded the same at the rate of Rs.15/- p.sq.meter along with the other benefits under

Section 23(1A) and solatium at 30% under Section 23(2) and as also interest under Section 28 of the said Act.

SUBMISSIONS:

4. Shri Tated, the learned AGP appearing on behalf of the State has strenuously urged that the reference court clearly erred in enhancing the compensation which was payable to the claimant at Rs.4,87,878/-. He submitted that the reference court had ignored the admission which was given by the claimant in his cross-examination wherein he had admitted that the lands in question were situated far away from the road. He further invited our attention to the admission given by the expert valuer who has been examined by the claimant. He submitted that the sale instances on which reliance was placed by the claimant were not clearly applicable to the facts of the present case. He further submitted that the reliance which was placed on the land reference court’s award in respect of other cases was pertaining to other project and the lands in the said cases were not similar to the lands in question.

5. Learned counsel appearing on behalf of the claimant submitted that the land reference court has

given cogent reason while coming to the conclusion that the market rate in respect of the lands was Rs.3/- p.s.f. He submitted that the reference court had taken into consideration the evidence of the expert valuer. He submitted that the expert valuer has stated in his evidence that the adjoining area was developed much before the notification under Section 4 of the said Act was issued and that the land admittedly had N.A. potentiality and it was situated near the railway station, S.T.station and main Panvel Town. He stated that the sale instances on which reliance was placed by the claimant clearly demonstrated that the adjoining land had fetched higher price at the relevant time. He submitted that the award on which the reliance was placed also clearly demonstrated that the land had N.A potentiality and compensation at the rate of Rs.25/- was granted in those cases. He further submitted that therefore the claimants were entitled to get enhanced compensation at the rate of Rs.25/- p.s.m.

6. In the present case, the claimant has examined two witnesses. In reference, he stated that he had made a claim of Rs.15/- p.s.m. in respect of the land before the SLAO and had made a claim for compensation at the rate of Rs.25/- to the reference court. He

stated that the village Taloja Gaothan in the district is at a 10 minutes walking distance from the Bombay-Pune National Highway. Similarly, Bombay-Pune National Highway is at a distance of 1/2 mile and Taloja Railway Station is at a distance of 1 and 3/4 miles. Further, the pipeline passes through the said area and electricity supply was available in the village prior to 1970. In his cross-examination, he has further admitted that the lands in question are paddy and surrounded by other paddy lands. He has also admitted in the cross-examination that he had not obtained electricity supply to the said lands and that there was no NA land near the lands in question. He also admitted that there was no sale instance having rate of Rs.25/- p.s.m. in respect of the lands situated in and around the village Owe. He has further admitted that the Sale deeds on which reliance was placed by him was in respect of the land which was situated in the village Gaothan and that there was no high school, dispensary in the are of the said village Owe. Further, he admitted that so far as the land of Tukaram Patil on which reliance was placed by the claimant is concerned, the same was situated in the village itself and that the compensation at the rate of Rs.8/- p.s.m. was awarded to the lands of one Shri Damle, and to the lands in respect of 3 to 4 land

reference cases. He however admitted that those lands were situated adjacent to the road whereas these lands were situated far away from the road. In view of the categorical admissions given by the claimant in his cross-examination, in our view, it will have to be held that the market value of the lands which were situated near the road at the relevant time was Rs.8/- p.s.m. The lands of the claimant admittedly were far away from the road. The claimant has also relied on the evidence of the expert valuer, who has admitted in his deposition that he did not visit the lands in question earlier when the notification under Section 4 was issued. Though he has stated that there was development of industries and hospitals and other services were available near the village Taloja, he admitted that prior to 2nd May, 1987, he had no occasion to visit the lands under reference. He has further admitted that prior to 3rd February, 1970, the lands situated in the area of village Owe were being used for agricultural purpose and that except village Taloja, there was no industrial development in the adjoining village and further there was no industrial development in the village Kharghar and Owe. Further, he has admitted that the land in question was away from the road and he was unable to state whether there was water logging in the said land during the rainy

season. From this evidence, it can be seen that the expert valuer has not taken into consideration the condition of the land and its proximity to the road in his examination-in-chief. He has in general term stated that the village Taloja and Panvel had been developed. Further, he has admitted that no basic amenities were available to the area and the sale instances on which reliance is placed by him are not comparable of the land. From the evidence of the claimant and the expert valuer, we are of the view that the reference court has clearly erred in enhancing compensation to Rs.15/- p.s.m. by ignoring various admissions which were given by the claimant as well as the expert valuer. In our view, the value of the land at the relevant date, at the highest, would be Rs.5/- p.s.m. since the value of the lands near the road was Rs.8/- p.s.m. at the relevant time and the lands of the claimant were situated far away from the road with no civil amenities like electricity, water, etc.

7. In the result, the submissions made by the learned AGP appearing on behalf of the State will have to be accepted and the submissions made by learned counsel appearing on behalf of the respondent-claimant will have to be rejected. The judgment and award

passed by the Civil Judge, Senior Division, Raigad, Alibag, is accordingly modified to the extent that the compensation which was payable to the claimant is reduced from Rs.15/- p.s.m. to Rs.5/- p.s.m. The other benefits which he is entitled to under the provisions of the said Act, viz. additional amount under Section 23(1A), solatium under Section 23(2) and interest on enhanced compensation under Section 28 of the said Act will have to be calculated on the amount which is so reduced. The claimant would be entitled to enhanced interest on the balance amount. The amount paid to the claimant would be recovered from him and shall be refunded within a period of 12 weeks from today. The First Appeal is allowed in the above terms. The cross objections filed by the claimant are rejected.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)